IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 378 OF 2005

Kisan Maruti Ransing ..Appellant

versus

Manukabai D. Ransing (deceased through heirs & Ors.) ..Respondents

Mr. Rahul S. Kate for the Appellant.

CORAM : D. G. DESHPANDE,J.

DATE : 21ST JULY,2005

P.C. :

1. Heard advocate for the Appellant.

2. Appellant is the original defendant son of deceased Maruti. He is challenging the judgments of the lower court in respect of two survey numbers only i.e. 1169 and 1140. According to the plaintiff, Maruti the father of Appellant Kisan was cultivating the land and was tenant of the land on behalf of the entire family and according to the defendant the appellant Maruti was tenant of the land on behalf of his restricted family.

3. Counsel for the appellant contends that this

issue whether Maruti was tenant either as a member of the joint family or in individual capacity should have been referred to the tenancy court.

4. Nobody is disputing that the Maruti was tenant i.e neither the plaintiff nor the defendant. Therefore, the question is whether he was tenant i.e. cultivating the land on behalf of the entire family or in his individual capacity, is a question that could be decided by the Civil Court. Secondly, no issue specifically was raised by the appellant before the trial court or before the appellate court for reference to the tenancy court. In fact, there is no question of any reference to the tenancy court. Not framing of issue is not fatal. No other point was pressed. No merit in this appeal, the same is dismissed.

21.7.2005 (D.G. DESHPANDE, J.)